

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Cosmetology
School Manager License (No. 20069086)
and Cosmetology Instructor License
(No. 20055933) of Nancy Lou Cole

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson commencing at 3:00 p.m. on June 12, 2000, at the Office of Administrative Hearings, 100 Washington Avenue South, in the City of Minneapolis, Minnesota. Jennifer Kenney, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("the Department"). The Respondent, Nancy Lou Cole, 7244 York Avenue South, # 227, Edina, Minnesota 55435, did not appear at the prehearing conference. The record closed on June 12, 2000, upon the Respondent's default.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendations set forth in this Report. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner of the Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issue in this contested case is whether or not disciplinary action should be taken against the Respondent or a civil penalty imposed against her for failing to maintain proper bonding for Cole's Cosmetology Center, Inc., failing to refund students' tuition and/or expenses after the school closed, failing to maintain student records for the requisite five years after the closing of the school, and failing to respond to a request for information made by the Department.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 9, 2000, the Notice of and Order for Hearing and Notice of Prehearing Conference was mailed to the Respondent by first class U.S. mail and by certified mail at her last known address, 7244 York Avenue South, #227, Edina, MN 55435. The Notice of Hearing sent by U.S. mail was never returned to counsel for the Department. The certified mail receipt with respect to the Notice of Hearing sent by certified mail to the Respondent was not returned to counsel for the Department.

2. The Notice of and Order for Hearing and Notice of Prehearing Conference mailed to the Respondent contained the following statement in bold type:

If Respondent fails to attend or otherwise appear at any prehearing conference or settlement conference or the hearing in this matter without the prior consent of the judge, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved and Respondent's licenses may be revoked or suspended, Respondent may be censured, and a civil penalty may be imposed against Respondent without further proceedings.

3. The Respondent did not appear at the June 12, 2000, prehearing conference, she made no request for a continuance, and she did not file a Notice of Appearance.

4. The allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference are deemed proved and incorporated into these Findings by reference.

Based on the foregoing Findings of Fact, the Administrative Law Judge hereby makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Commissioner of Commerce and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. §§ 45.027, 155A.135, and 14.50.

2. The Respondent was given timely and proper notice of the prehearing conference in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of statute and rule.

4. Under Minn. Rule 1400.6000, the Respondent is in default as a result of her failure to appear at the scheduled prehearing conference.

5. Under Minn. Rule 1400.6000, the allegations and issues set out in the Notice of and Order for Hearing and Notice of Prehearing Conference may be taken as true or deemed proved when a party defaults.

6. Based upon the facts set out in the Notice of and Order for Hearing and Notice of Prehearing Conference, the Respondent has violated Minn. Stat. §§ 155A.09, subd. 5(h), and 45.027, subd. 1(a), and Minn. R. 2644.0670 (D). The Respondent consequently is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 155A.135 and 45.027, subds. 6 and 7.

7. The issuance of an order relating to the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against Respondent and that the Commissioner consider civil penalties.

Dated this 20th day of June, 2000

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.